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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 22 of 2005

PETITIONER : Dr. P.V.Chandrakar

VERSUS

RESPONDENTS : State of Chhattisgarh & Others

WRIT PETITION No. 1097 of 2005

PETITIONER : Dr. Bhagwant Singh

VERSUS

RESPONDENTS : Pt. Ravi Shankar Shukla University and another

Post for order on 4th July, 2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 22 of 2005

PETITIONER : Dr. P.V.Chandrakar Aged about 53 years S/O Shri Bhagwat Prasad Chandrakar Professor, Department of Comparative Religion and Philosophy Pt. Ravishankar Shukla Vishwavidyalaya, Raipur (C.G.) 492010

VERSUS

RESPONDENTS :
1. State of Chhattisgarh Through the Secretary Department of Collegiate Education, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Commissioner Collegiate Education Science College Campus Raipur (C.G.)
3. Pt. Ravishankar Shukla Vishwavidyalaya Through the Registrar Raipur (C.G.)
4. Chancellor Pt. Ravishankar Shukla Vishwavidyalaya, Raipur (C.G.)
5. Vice Chancellor Pt. Ravishankar Shukla Vishwavidyalaya, Raipur (C.G.)

WRIT PETITION No. 1097 of 2005

PETITIONER : Dr. Bhagwant Singh, S/o Late – Samar Bahadur Singh, Aged about 48 years, Reader and Head of the Department of Comparative Religion and Philosophy, Pt. Ravi Shankar Shukla University, Raipur (C.G.)

VERSUS

RESPONDENTS :
1. Pt. Ravi Shankar Shukla University Through the Registrar, Raipur (C.G.)
2. Vice-Chancellor, Pt. Ravi Shankar Shukla University, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present:

In W.P. No. 22/2005

Shri Kanak Tiwari, Sr. Advocate with Shri Jitendra Pali, Advocate for the petitioner.

Shri V.V.S.Moorthy, Dy. Advocate General with Smt. Anju Ahuja, Dy. Govt. Advocate for the State/respondent No. 1 and 2.

Shri J.R.Verma, Advocate with Shri C.R.Sahu, Advocate for respondent No. 3 & 5.

Shri Prashant Mishra Sr. Advocate with Shri Sanjay S. Agrawal, Advocate for the respondent No. 4.

In W.P. No. 1097/2005

Dr. Bhagwant Singh, Petitioner in person.

Shri J.R.Verma, Advocate with Shri C.R.Sahu, Advocate for the respondents.

ORDER
(Passed on ..14th day of July, 2007)

1. Both the petitions i.e. W.P. No. 22/2005 and W.P. No. 1097/2005 arise from the same cause of action and the order impugned herein in both the petitions is also the same. Thus, both the petitions are being disposed of by this common order.

2. By this petition, the petitioner in W.P. No. 22/2005 (hereinafter referred to as "first petitioner") challenges the legality and validity of the termination/ cancellation order dated 01.01.2005 (Annexure P/14) passed by the Registrar of the respondent University, pursuant to the order dated 24.12.2004 of the Chancellor of the University (Annexure I/34).

3. The indisputable facts, in nutshell, are that the first petitioner alongwith Dr. Bhagwant Singh and others, applied for appointment on the post of professor in Comparative Religion and Philosophy pursuant to the advertisement dated 24.09.2002 (Annexure P/1). The applicants were required to give their academic qualifications from matriculation onwards in the application form (Annexure P/2).

4. It is admitted that the first petitioner did not mention in the column about examination of B.Sc. (Preliminary) Examination. The Selection Committee, having considered the case of the applicants including Dr. Bhagwant Singh, recommended the name of the first petitioner and the first petitioner was accordingly appointed as professor in Comparative Religion and Philosophy for a period of two years on probation by order dated 20.09.2003 (Annexure P/3). The constitution of the Selection Committee is not in dispute. The first petitioner joined duty as professor on 20th Sept. 2003 after-noon (Annexure P/5).

5. Dr. Bhagwant Singh, (petitioner in W.P. No. 1097/2005) (hereinafter referred to as "the second petitioner") being aggrieved, made a complaint to the Chancellor/ respondent No. 4 pointing out irregularities committed in the Selection Committee by recommending the name of the first petitioner for appointment on the post of

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Professor of Comparative Religion and Philosophy ignoring the fact that the first petitioner has not given details of B.Sc. (Preliminary) examination which was required to be furnished in the column of academic qualification (from matriculation onwards). A notice was issued to the University on 9.12.2003 (Annexure R/4-1). The respondent No. 3 / University sent its response / comments on 7.1.2004.

6. Thereafter, the office of the Chancellor, after considering the report of the University, referred the matter to the Secretary, Higher Education for report on the issue. A notice was issued to the first petitioner on 8th July, 2004 from the office of the Commissioner, Higher Education, Government of Chhattisgarh (Annexure P/9). The first petitioner, vide letter dated 12.7.2004 (Annexure P/11) submitted his reply to the notice of the Commissioner, Higher Education. The Commissioner, after having conducted proper enquiry by summoning the papers from all the concerned, submitted his report vide covering letter dated 22nd July, 2004 (Annexure I/32) (Annexure I/33).

7. The Chancellor after having considered the report submitted by the University and the report submitted by the Government, in exercise of its power under section 12(4) of the Chhattisgarh Universities Act, 1973 (hereinafter referred to as 'the Act, 1973') cancelled the decision of the Selection Committee dated 12.09.2003, and also that of the Executive Council on 20.09.2003 approving the decision of the Selection Committee subsequently. It was directed to hold interview a fresh for the post of Professor, Comparative Religion and Philosophy, after calling open applications and strictly complying with the provisions of the Act, 1973. Pursuant to the order of the Chancellor, the University, vide order dated 01.01.2005 (Annexure P/14), cancelled the decision of the Executive Council dated 20.09.2003 and consequently, the appointment of the first petitioner on the post of the Professor of Comparative Religion and Philosophy was also cancelled.

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8. Being aggrieved, the petitioner has filed this petition seeking a writ of certiorari to quash the impugned termination / cancellation order and also the order passed by the respondent No. 4 annulling the proceedings of the Executive Council.

9. The petitioner in W.P. No. 1097/2005, being aggrieved by the order of the Chancellor, seeks for a writ in the nature of mandamus to appoint second petitioner on the post of Professor, Department of Comparative Religion and Philosophy as he was at No. 1 in the waiting list after cancellation of the appointment of the first petitioner. He was entitled to be appointed as professor on the said post.

10. Shri Kanak Tiwari, learned senior counsel with Shri Jitendra Pali, learned counsel appearing for the first petitioner would submit that the report submitted by the Commissioner/Secretary, Government of Chhattisgarh to the Chancellor was not supplied to the first petitioner. The order dated 24.12.2004 pursuant to which the impugned termination / cancellation order was passed, was also not furnished to him. He would further submit that once the Selection Committee was duly constituted under provisions of Section 49(2) of the Act, 1973 annulling the recommendation and subsequent approval of the Executive Council by the Chancellor is not within the jurisdiction of the Chancellor in exercise of its power under Section 12(4) of the Act, 1973. Non-mentioning of educational qualification of B.Sc. (Preliminary) does not affect materially the merit of the petitioner for appointment of the petitioner on the post of Professor. Entire enquiry proceedings conducted by the Secretary/Commissioner, Higher Education was beyond its jurisdiction and the petitioner did not have sufficient reasonable opportunity. The opinion of the Secretary that the petitioner has minimum qualification and sufficient experience in teaching higher classes, research paper publication etc. was completely ignored. Thus, it cannot be held that non-supply of information with regard to B.Sc. (Preliminary) examination was an irregularity.

11. It was further contended that the impugned order deserves to be quashed on account of the fact that the petitioner was not afforded sufficient reasonable opportunity of hearing. The enquiry was conducted at the behest of the second petitioner. The petitioner was not supplied report of the Secretary submitted to the respondent No. 4 and the order passed by the respondent no. 4 pursuant to which the impugned termination order was passed, was also not supplied to him.

12. On the other hand, Shri V.V.S.Moorthy, learned Deputy Advocate General with Smt. Anju Ahuja, learned Deputy Government Advocate, appearing for the respondent/State would submit that the respondent no. 1 and 2 are not necessary parties as they are neither the appointing authority nor the terminating authority. The respondent No. 1 and 2 have conducted the enquiry with regard to the appointment of the petitioner at the direction of the Chancellor and enquiry report was accordingly submitted on 12.10.2004 (Annexure I-33).

13. Shri Prashant Mishra, learned senior counsel with Shri Sanjay S. Agrawal, learned counsel appearing for the respondent No. 4/Chancellor, would submit that the respondent no. 4, on receiving the complaint from the second petitioner, has issued notice to the University seeking its comments on the subject vide letter dated 09.12.2003 (Annexure R/4-1). The respondent University submitted its comments on 7.1.2004 (Annexure R/4-3) stating that the Selection Committee has examined the comparative qualification of the present petitioner. On perusal of the report, submitted by the University, it was found that the comparative chart of the candidates before the Selection Committee did not contain marks obtained by the second petitioner wherein he had secured first division in the Intermediate Examination.

14. He would further contend that on enquiry, it was found that relevant materials were not placed before the Committee and some relevant information was suppressed by the petitioner, accordingly the Chancellor found that the

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proceedings of the selection committee were prejudicial to the interest of the University, thus, in exercise of its power under sub section 4 of Section 12 of the Act, 1973 annulled proceedings of the selection committee as well as that of the Executive Council recommending the name of the petitioner for appointment on the post of Professor. Submission of non-furnishing of details of B.Sc. (Preliminary) is relevant as the same amounts to concealment of the fact.

15. The second petitioner, Dr. Bhagwant Singh appearing in person, per contra, would submit that the power vested in the Chancellor under provisions of sub Section 12 does not limit the jurisdiction and power of the Chancellor as, if it is found that any proceedings may be of the selection committee or of the Executive Council is irregular and not in the interest of the University and prejudicial to the interest of the University, the Chancellor is competent to annul the same. The first petitioner was afforded sufficient opportunity of hearing as the notice was issued by the office of the Commissioner, Higher Education and the petitioner has submitted his detailed reply to the notice putting forward his case. The Chancellor had taken decision to annul the proceedings on the basis of overall facts and irregularities noticed in consideration of the proceedings. With regard to his appointment, he would submit that the Chancellor ought to have directed appointment of the second petitioner on the post of Professor of Comparative Religion and Philosophy.

16. Shri J.R.Verma, learned counsel with Shri C.R.Sahu, learned counsel appearing for the respondent University would submit that the Chancellor respondent- 4 has jurisdiction to annul the proceedings. The University has complied with the order passed by the Chancellor dated 24.12.2004 which is binding on the respondent University and there is no irregularity in the impugned order dated 01.01.2005.

17. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the first petitioner was given

sufficient opportunity of hearing before the order dated 24.12.2004 was passed. The petitioner was supplied a copy of the complaint made by the second petitioner vide covering letter dated 8th July 2004 (Annexure P/9). The first petitioner submitted his detailed reply on 12.7.2004 (Annexure P/11) with all the necessary documents. The Commissioner, after having conducted the enquiry at the instance of the Chancellor, submitted his report to the Secretary, Higher Education Department, Government of Chhattisgarh vide letter dated 22nd July, 2004 (Annexure I/32) observed as under:

"4. क्या विश्वविद्यालय अधिनियम एवं परिनियमों के आधार पर कार्यवाही की गई है ?

पं. रविशंकर शुक्ल विश्वविद्यालय द्वारा तुलनात्मक धर्म एवं दर्शनशास्त्र विषय, के आचार्य एवं प्रवाचक पद हेतु विज्ञापन कमांक 3063/सप्र/2002 दिनांक 24/09/02 के द्वारा किया गया तथा आवेदन प्राप्त किये गये। समिति द्वारा आवेदन पत्रों की छटाई की गई तथा आवेदन पत्रों की जांच कर 5 अभ्यर्थियों को प्रो. पद के साक्षात्कार हेतु बुलाया गया विश्वविद्यालय अधिनियामानुसार साल में 1 बार कभी–कभी दो या तीन साल में एक बार कुलाधिपति के निर्देशानुसार विषय विशेषज्ञों की सूची मंगाई जाती है तथा साक्षात्कार हेतु चयन समिति का नामांकन किया जाता है। इन शिक्षकीय पदों में नियुक्ति हेतु भी कुलाधिपति द्वारा तीन विषय विशेषज्ञों का नामांकन किया गया था तथा सभी तीनों सदस्थ उपस्थित हुये थे। इन पदों पर नियुक्ति प्राधिकारी कार्यपरिषद है जिसके 11 सदस्य थे जिनमें से दो सदस्य डॉ. पी.व्ही. चंद्राकर की नियुक्ति के समय अनुपस्थित थे (1) श्री भागवत चंद्राकर (2) श्रीमती गीता तिवारी। विश्वविद्यालय अधिनियम 49 (4) (5) के अनुसार साक्षात्कार के उपरांत के पेनल में अनुशंसित दोनों नामों का उल्लेख कार्य परिषद के कार्यवृत्त में होना चाहिए था। प्रोफेसर पद हेतु (1) डॉ. पी.व्ही. चंद्राकर (2) डॉ. भगवंत सिंह तथा रीडर पद हेतु (1) डॉ. पी.व्ही. चंद्राकर (2) डॉ. गायत्री शर्मा तत्पश्चात प्रथम चयनित अभ्यर्थी के नाम पर निर्णय लिया जाना चाहिये था किंतु ऐसा प्रतीत होता है कि चयन समीति की कार्यवृत्त में नियुक्ति हेतु किसे उपयुक्त पाया गया इस पर विधिवत चर्चा नहीं हुई। कार्यवृत्त के मिनीट्स के अवलोकन से यह पता नही चलता है कि, समिति द्वारा चयनीत पेनल के दोनों नामों पर चर्चा हुई, पेनल में गुणानुकम पर प्रथम अवस्थित अभ्यर्थी को नियुक्ति दिया जाना है। इस निर्णय का अंकन नहीं हुआ है। विश्वविद्यालय अधिनियम 1973 के अनुसार दिनांक 12/09/03 को साक्षात्कार संपन्न हुआ दिनांक 20/09/03 को कार्यपरिषद की बैठक संपन्न हुई।"

18. Thereafter, the Commissioner, Higher Education Department, sent a letter dated 12.10.2004 to the Secretary, Governor House (Annexure I/33) observed as under:

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"Per-se even if Dr. P.V.Chandrakar's B.Sc. (Preliminary) results are taken to be a concealed information, and is included in his application form, it is not going to have any material impact on the status of valuation of Professor Chandrakar because of the Vishwavidyalaya Adhiniyam 1973, 49(4) under which the selection committee has performed its duties i.e. Evaluation is based solely on the performance of the candidates based on the questions asked at the interview. There is no evidence as to how much weightage has been accorded to Academic achievements, Research Publication, Books Published, Research Guidance, Seminars & Symposia attended. Moreover, there is no point in going what has transpired at the selection committee meeting where his Excellency's nominee and the then Secretary's nominee were present for an impartial selection as per rules."

9. The Chancellor, after having examined the comments of the University and the reports submitted by the Commissioner, Higher Education and Secretary, Higher Education Department, held as under:

"7. Respondent Dr. P.V.Chandrakar has admitted that while applying for the post of Lecturer in 1986 he had mentioned the result of B.Sc. (Prel.), but it was not necessary to mention the result and therefore, he had not mentioned the result of B.Sc. (Prel.) in the present application for the post of Professor. According to the respondent he has not suppressed any material information and the decision of the selection committee which consists of experts regarding the relative merits of the candidates can not be challenged and the Court/appellate authority can not sit in judgment over the decision of the selection committee. From the perusal of the photo copy of the application form it is clear that the candidates were to mention their academic qualifications from matriculation onwards. As per the ordinance 21(3) of Pt. R.S.U., Raipur B.Sc. (Preliminary) is equivalent to intermediate and as per the ordinance 21(9) the results of B.Sc. (Preliminary) shall be determined independently. In view of this respondent Dr. P.V.Chandrakar was bound to mention the result of his B.Sc. (Preliminary) examination in the application form which he had not mentioned. Respondent Dr. P.V.Chandrakar had passed B.Sc. (Preliminary) in 1968 in pass division with compartment in Chemistry securing only 37.33 marks. The result of intermediate of appellant Dr. Bhagwant Singh was not shown in the comparative table which was placed before the selection committee in which he (appellant) had secured first division. As such, all the relevant material was not placed before the selection committee. Respondent Dr. P.V.Chandrakar who had mentioned his B.Sc. (Preliminary) examination result in his application while applying for the post of Lecturer in 1986 had deliberately and with malafide intention suppressed the result in the present application. In addition to this, it is not clear as to how much percentage of total marks were allocated for the oral interview test because more than 15% of the total marks has been held by the Supreme Court to be arbitrary, unreasonable and consequently unconstitutional. From the perusal of the material on record it is clear that even the minutes of the meeting of the selection committee dated 12.09.2003 have not been

signed by the Vice Chancellor who is the Chairman of the Selection Committee."

and ordered to allow the appeal filed by the second petitioner in part. The decision of the selection committee dated 12.09.2003 and subsequent approval by the Executive Council of 20.09.2003 was annulled and the University was directed to hold a fresh selection for appointment on the post of Professor, after calling applications and strictly complying with the provisions of the Act, 1973 and the statute and ordinance made thereof. The contention of the learned counsel for the petitioner that he had no sufficient opportunity of hearing is rejected. The petitioner had an opportunity to put forward his case as the first petitioner has submitted his response to the Secretary to the Chancellor, respondent No. 4 also on 9.11.2004 (Annexure P/13).

20. The Supreme Court, in the matter of Viveka Nand Sethi v. Chairman, J&K Bank Ltd.[1] has observed that "the principles of natural justice are required to be complied with having regard to the facts and circumstances obtaining therein. It cannot be put in a strait jacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse". The facts and circumstances of the present case as stated-above indicates sufficient compliance of principles of natural justice. The grievance of the petitioner that the report of the Commissioner/Secretary, Higher Education Department, the State of Chhattisgarh and order of the Governor pursuant to which the impugned order was passed was not communicated to the first petitioner, does not survive as the petitioner had sufficient opportunity before the Commissioner, Higher Education and he has submitted his response to the Chancellor also.

21. In the matter of P.D. Agrawal v. State Bank of India and Others[2], the Supreme Court observed as under:

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> "30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

22. The Supreme Court, in the matter of Neelima Mishra v. Harinder Kaur Paintal and Others[3] observed as under:

> **29.** The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution....."

23. In the case of Dalpat Abasaheb Solunke & Others v. Dr. B.S.Mahajan & Others[4], the Supreme Court observed as under:

> "12.....Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc."

24. In the matter of District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi[5], the Supreme Court observed as under:

> **"6.** It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

25. In the matter of Secy. Deptt. Of Home Secy. A.P. and others v. B. Chinam Naidu[6], the Supreme Court observed as under:

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> "7. .....As is noted in *Kendriya Vidyalaya Sangathan case* the object of requiring information in various columns like column 12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law."

26. The High Court of Madhya Pradesh, in Anuradha Shomeshwar Gupta v. Ravishankar University, Raipur and others[7], while considering the authority of the Chancellor vis-à-vis recommendation made by the Selection Committee approved by the Executive Council observed as under:

> "24.....The Selection Committee under the scheme of section 49 is only a recommendatory committee which is constituted temporarily for conduct of a selection vis-à-vis particular advertisement for a particular post. It is also clear that the functions of the Selection Committee are over as soon as it submits its report to the Executive Council and it is the Executive Council, which is a body of the University, which takes decision. It was contended by the learned counsel that in view of section 49(5), the Executive Council was bound to follow the decision of the Selection Committee and therefore, so long as the decision of the Selection Committee was not set aside or annulled, the Executive Council was bound to accept it."
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> "30. In the light of the discussion made above, therefore, the action taken by Kuladhipati in annulling the proceedings of the Executive Council and the consequential annulment of the appointment of the petitioner could not be said to be, in any manner, beyond the scope of authority or without jurisdiction. As discussed earlier, it could not be contended that Kuladhipati has committed any error of law."

27. Applying the well settled principles of law to the facts of the case on hand, it is found that in the facts and circumstances of the case, the principles of natural justice is complied with fully. The first petitioner could not have given more details than what he had submitted before the Commissioner, Higher Education, who was conducting the enquiry and further before the Chancellor himself. Thus, there is no infirmity in the enquiry.

28. So far as the power of the Chancellor is concerned, bare reading of provisions of Section 12(4) of the Act, 1973 makes it clear that the Chancellor has jurisdiction and power to annul the proceedings of the Executive Council approving the

recommendations of the Selection Committee after having found irregularity in the selection process which is not in the interest of the University. Thus, the impugned order as well as the order dated 24.12.2004 passed by the respondent No. 4 is just and valid and does not warrant any interference. This Court, in case of appointment of the employees has limited power to examine the process of selection, not the decision itself. The petition of the first petitioner W.P. No. 22/2005 is accordingly dismissed.

9. In view of the reasons stated hereinabove, since the selection process itself has been cancelled, the second petitioner has no right to be appointed on the said post. Thus, the Writ Petition No. 1097/2005 is also dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. (2005)5 SCC 337
2. (2006) 8 SCC 776
3. (1990) 2 SCC 746
4. (1990) 1 SCC 305
5. (1990) 3 SCC 655
6. (2005) 2 SCC 746
7. (1982) vol. 27 M.P.L.J. 180